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14
15 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

16
17 **FEDERAL TRADE COMMISSION,**

18 Plaintiff,

19 v.

20 **CONSUMER DEFENSE, LLC, *et al.*,**

21 Defendants.
22

Case No. 2:18-cv-00030-JCM-PAL

**FTC'S OPPOSITION TO THIRD
PARTY PHILLIP HANLEY'S
MOTION FOR SUBROGATION**

23 Plaintiff, Federal Trade Commission, hereby submits its opposition to third party Phillip
24 Hanley's motion to require the FTC to certify Mr. Hanley's right of subrogation.¹ (ECF No. 32.)
25

26 ¹ The FTC notes that Mr. Hanley also filed an "Answer" to the FTC's motion for
27 preliminary injunction. (ECF No. 33.) The FTC will include its response to Mr. Hanley in its
reply brief due on February 14. (*See* ECF No. 30 at 2 (deadline for filing FTC reply brief).)

1 Because Mr. Hanley has not satisfied any of the elements necessary to assert equitable
2 subrogation, his motion should be denied.

3 Subrogation is an equitable remedy appropriate where: “(1) Payment [was] made by the
4 subrogee to protect his own interest. (2) The subrogee [has] not . . . acted as a volunteer. (3) The
5 debt paid [was] one for which the subrogee was not primarily liable. (4) The entire debt [has]
6 been paid. (5) Subrogation [would] not work any injustice to the rights of others.” *Han v.*
7 *United States*, 944 F.2d 526, 529 (9th Cir. 1991) (internal citations omitted). “[S]ubrogation is
8 the substitution of one party in place of another with reference to a lawful claim, demand or
9 right. . . . Subrogation places the party paying the loss or claim (the ‘subrogee’) in the shoes of
10 the person who suffered the loss (‘the subrogor’). Thus, when the doctrine of subrogation
11 applies, the subrogee succeeds to the legal rights and claims of the subrogor with respect to the
12 loss or claim.” *Hamada v. Far East Nat’l Bank (In re Hamada)*, 291 F.3d 645, 649 (9th Cir.
13 2002); *In re Flamingo 55, Inc.*, 378 B.R. 893, 905-06 (Bankr. Nev. 2007).

14 Here, Mr. Hanley has failed to demonstrate any element necessary to establish a right of
15 subrogation. Most critically, Mr. Hanley has not identified any payment he has made on behalf
16 of any Defendant related to any debt arising out of this action. Mr. Hanley, the father of
17 Defendant Jonathan Hanley and a former employee of Defendants’ mortgage assistance relief
18 operation (*see, e.g.*, ECF No. 7-6 at 63), was served with a copy of the Temporary Restraining
19 Order entered in this case in his capacity as a potential third party asset holder or as a possible
20 Rule 65(d)(2) person subject to the TRO. Fed. R. Civ. P. 65(d)(2) (injunctions apply to the
21 parties’ “employees” and others “who are in active concert or participation” with the parties). To
22 the extent that he maintains any assets or documents related to Defendants, Section VI of the
23 TRO requires Mr. Hanley only to “hold, preserve, and retain” those assets and documents and
24 prohibit Defendants from accessing them. (ECF No. 12 at 11-13.) Nothing in the TRO requires
25 Mr. Hanley to make any payment to the FTC, nor has the FTC requested that Mr. Hanley do
26 anything more than review the TRO and determine what his obligations may be under the order.

1 Not having made any payments, there is no basis for subrogation. Accordingly, the Court
2 should deny Mr. Hanley's motion.

3
4 Dated: February 12, 2018

Respectfully submitted,

5 DAVID SHONKA
6 Acting General Counsel

7 /s/ Gregory A. Ashe

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CERTIFICATE OF SERVICE

Undersigned counsel certifies that on February 12, 2018, **FTC'S OPPOSITION TO THIRD PARTY PHILLIP HANLEY'S MOTION FOR SUBROGATION** was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

Abran E. Vigil
Blaine T. Welsh
Gregory A. Ashe
Edward T. Chang
Adam M. Wesolowski
Gregory A. Miles

The undersigned counsel further certifies that the documents will be emailed, overnighted, and/or hand-delivered to the following non-CM/ECF participants:

Andrew Robertson
Karra Porter
J.D. Lauritzen
Benjamin Horton (Defendant *pro se*)
Phillip Hanley

/s/ Gregory A. Ashe
Attorney for Plaintiff Federal Trade Commission